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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,892	07/15/2003	Jessica Elizabeth LeMay	460.2221USQ	7326

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EXAMINER

ANDERSON, CATHARINE L

ART UNIT	PAPER NUMBER
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3761

MAIL DATE	DELIVERY MODE
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11/07/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/619,892

Applicant(s)

LEMAY ET AL.

Examiner

Lynne Anderson

Art Unit

3761

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☒ Information Disclosure Statement(s) (PTO/SE/US)
Paper No(s)/Mail Date 10/6/08
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 4 August 2008 have been fully considered but they are not persuasive.
2. In response to the applicant's argument that Voss fails to disclose a flared region adjacent the finger grip, the applicant's argument is moot in view of the new grounds of rejection.
3. In response to the applicant's argument that Voss fails to disclose quantitative values regarding the taper ratio of the main section of the applicator, it is noted that the description of the article pictured can be relied upon, in combination with the drawings, for what they would reasonably teach one skilled in the art (see MPEP 2125).
Therefore, the description by Voss of a tampon applicator having a tapered main section, in combination with the drawings showing a gradually tapered main section, can reasonably teach one skilled in the art to provide the main section of a tampon applicator with a gradual taper.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 11-20, 44, and 46-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Voss (4,361,150) in view of Schoelling (5,453,085).

6. With respect to claims 11-13, 16, 44, and 46-47, Voss discloses all aspects of the claimed invention with the exception of a flared region adjacent the finger grip having a flared maximum outer diameter that is 10-30% larger than the outer diameter of the finger grip. Voss discloses a tampon applicator assembly comprising a barrel 12, a plunger 13, and a pledget H, as shown in figure 1. The barrel 12 has an insertion area with an insertion tip 20, a finger grip area 18, and a tapered main section 15 therebetween. The tapered main section 15 has a maximum outer dimension located closer to the finger grip area 18 than the insertion tip 20, as shown in figure 1, and described in column 4, lines 15-19. The finger grip area 18 may be defined to include up to 25% of the distal end of the barrel 12, and therefore the maximum outer dimension of the tapered main section 15 will be located from the insertion tip 20 about 75% of the overall length of the barrel 12. The insertion tip 20 comprises a plurality of petals 19, as shown in figure 1. The tapered main section 15 is tapered linearly from the maximum outer dimension to the insertion tip area 17, as shown in figure 1, and described in column 4, lines 15-19.

7. Schoelling teaches the use of a finger grip 10 for a tampon applicator, as shown in figure 1, having a flared region 30 that has a diameter larger than the diameter of the finger grip area 28. The plunger 18 has a first outer diameter at end 32 that is larger than the main outer diameter of the plunger, providing a gradual taper that coordinates with the flared region of the finger grip. The finger grip and plunger of Schoelling provide the predictable result of creating a clearly defined finger grip area. It would therefore be obvious to one of ordinary skill in the art to provide the tampon applicator of

Voss with the finger grip configuration taught by Schoelling, to provide the predictable result of creating a clearly defined finger grip area. It would further be obvious to one of ordinary skill in the art at the time of invention to make the maximum diameter of the flared region 10-30% larger than the outer diameter of the finger grip, since it has been held that where the general conditions of the claims are disclosed in the prior art (i.e. providing a finger grip with a flared region), finding the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

8. With respect to claims 14-15, Voss discloses all aspects of the claimed invention with the exception of the taper ratio being about 1.08 to about 1.13. Voss discloses the main section being tapered, as described in column 4, lines 15-19, but remains silent as to the degree of the taper. The taper of the barrel of Voss is shown in figure 1 as being very gradual. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the applicator barrel of Voss with a taper ratio of about 1.08 to about 1.13 to provide a gradual taper to the barrel.

9. With respect to claims 17-18, Voss discloses all aspects of the claimed invention with the exception of the insertion tip having a taper ratio of between about 0.7 and 0.9. Voss discloses the insertion tip is tapered at an angle of about 90°, as described in column 4, lines 33-45, but remains silent as to the ratio of the taper. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the insertion tip area of Voss with a taper ratio between about 0.7 and 0.9, in order to provide a taper having an angle of about 90°.

10. With respect to claims 19-20, Voss discloses all aspects of the claimed invention with the exception of the petal length-to-width ratio being over about 2. Voss discloses the petals having a length greater than their width, as shown in figure 1, but remains silent as to the exact dimensions of the petals. Voss further discloses in column 4, lines 33-45, the length-to-width ratio of the petals must be sufficiently long to provide the insertion end area with a taper having an angle of about 90° . It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the petals of Voss with a length-to-width ratio of greater than about 2, in order that the petals having a length sufficient to provide the the insertion end area with a taper having an angle of about 90° .

11. Claims 21-24, 26-33, 35-40, and 42-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Voss (4,361,150).

12. With respect to claims 21-24, 26, 33, 40, and 45, Voss discloses all aspects of the claimed invention with the exception of the taper ratio being about 1.08 to about 1.13. Voss discloses the main section being tapered, as described in column 4, lines 15-19, but remains silent as to the degree of the taper. The taper of the barrel of Voss is shown in figure 1 as being very gradual. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the applicator barrel of Voss with a taper ratio of about 1.08 to about 1.13 to provide a gradual taper to the barrel.

13. With respect to claims 29-32, and 42-43, Voss discloses all aspects of the claimed invention with the exception of the insertion tip having a taper ratio of between

about 0.7 and 0.9. Voss discloses the insertion tip is tapered at an angle of about 90° , as described in column 4, lines 33-45, but remains silent as to the ratio of the taper. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the insertion tip area of Voss with a taper ratio between about 0.7 and 0.9, in order to provide a taper having an angle of about 90° .

14. With respect to claims 27-28, and 35-39, Voss discloses all aspects of the claimed invention with the exception of the petal length-to-width ratio being over about 2. Voss discloses the petals having a length greater than their width, as shown in figure 1, but remains silent as to the exact dimensions of the petals. Voss further discloses in column 4, lines 33-45, the length-to-width ratio of the petals must be sufficiently long to provide the insertion end area with a taper having an angle of about 90° . It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the petals of Voss with a length-to-width ratio of greater than about 2, in order that the petals having a length sufficient to provide the the insertion end area with a taper having an angle of about 90° .

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. 5,531,674 discloses a tampon applicator having a tapered main body.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynne Anderson whose telephone number is (571)272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. A./
Examiner, Art Unit 3761
/Tatyana Zalukaeva/
Supervisory Patent Examiner, Art Unit 3761